

## AN ORDINANCE

TO REVISE THE GOING OUT OF BUSINESS SALES ORDINANCE BY  
REPEALING AND ADDING PROVISIONS IN THE GREENVILLE CITY  
CODE, CHAPTER 8, ARTICLE VII, SECTIONS 8-211 THROUGH 8-223

WHEREAS, Chapter 8, "Businesses," Article VII, "Going Out of Business Sales," of the Greenville City Code provides the requirements for Going Out of Business Sales with the purpose of preventing abuses to consumers and other community businesses which are on-going; and

WHEREAS, City Council has received reports that bona fide businesses experience hardships in complying with the provisions of Article VII at the time they are already facing the expense and hardship of ceasing operations; and

WHEREAS, City Council wants to lessen the burden on bona fide business but still have meaningful measures which deter abuses; and


WHEREAS, City Council has determined that it can simplify the City Code provisions for Going Out of Business Sales in a way that continues consumer protections against abuses, but lessens the inconvenience and expense being experienced by bona fide businesses that are having to close;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GREENVILLE, SOUTH CAROLINA, that the Greenville City Code shall be amended to eliminate certain provision of the Code that regulate Going Out of Business Sales. The purpose is to relieve owners and operators bona fide businesses from undue hardship at a time in the life of their business that they are otherwise faced with an imbalance in the costs of doing business in relation to the revenue being earned. The purpose is also to establish reasonable steps in preserving but reformulating measures that protect consumers from abusive practices. The attached exhibit showing provisions of Chapter 8, "Businesses," Article VII, "Going Out of Business Sales," is incorporated herein by reference. Any words which are struck through shall be deleted. Any words which are underlined shall be added. This Ordinance shall apply after second and final reading to businesses initiating a Going Out of Business Sale.

DONE, RATIFIED AND PASSED THIS THE 25 DAY OF October, 2010.

  
\_\_\_\_\_  
MAYOR

ATTEST:

  
\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

  
CITY ATTORNEY

REVIEWED:

  
CITY MANAGER

## EXHIBIT

### REVISIONS TO CHAPTER 8, "BUSINESSES," ARTICLE VII, "GOING OUT OF BUSINESS SALES," OF THE GREENVILLE CITY CODE

#### ARTICLE VII. GOING OUT OF BUSINESS SALES

##### Sec. 8-211. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Business means the selling ~~or~~ of products, the providing of services, or both, in exchange for payment in cash or other valuable consideration. It also means any person, as defined herein, who is engaged in business.

Going Out of Business means the permanent or indefinite cessation of business operations.

Going Out of Business Sale means the offering of products or services with the representation by advertising or otherwise that the business is going to cease operations soon. Ordinarily Going Out of Business Sales imply that the products and services are being offered at a price significantly below that previously charged or at a price significantly below that ordinarily charged by others. However, it is not necessary that the price of products and services actually be reduced, or advertised as reduced, in order for a Going Out of Business Sale to be subject to this article, it being sufficient that the phrase "Going Out of Business," "Closing" or like wording be used to indicate that the products or services are offered in anticipation of a cessation of business activity.

*Inspector* means the license inspector of the city.

*License* means a license issued pursuant to this article.

*Licensee* means any person to whom a license has been issued pursuant to this article.

*Publish, publishing, advertisements and advertising* mean any and all means of conveying to the public notice of a sale, or notice of intention to conduct a sale, whether by word of mouth, newspaper advertisement, magazine advertisement, handbill, circular, pamphlet, written notice, printed notice, printed display, billboard display, poster, radio or television announcement, radio or television program, recordings, internet, or any and all other means, including oral, written or printed means.

*Sale* means the sale or an offer to sell to the public goods, wares and merchandise of any and all kinds and descriptions on hand and in stock in connection with a declared purpose, as set forth by advertising on the part of the seller that such sale is anticipatory to the termination, closing, liquidation, removal, revision, wind-up, discontinuance, conclusion or abandonment of the business in connection with such sale. The term shall also include any sale advertised, either specifically or in substance, to be a fire sale, smoke and water damage sale, adjustment sale, creditor's sale, trustee's sale, bankrupt sale, save-us-from-bankruptcy sale, insolvent

sale, insurance salvage sale, mortgage sale, assignee's sale, adjustor's sale, loss-of-lease sale, receiver's sale, forced-out-of-business sale, or removal sale, and any and all sales advertised in such a manner as to reasonably convey to the public that upon the disposal of the stock of goods on hand the business will cease and be discontinued.

Person means an individual, an organization, a partnership, corporation, or other business entity.

### **Sec. 8-212. Findings**

Council finds there is a potential harm to the public and bona fide operating businesses if unscrupulous business operatives holdout to the public that they are offering items at a "Going out of Business Sale," which counts both a cessation of business activities and drastically reduced rates. When such sales are prolonged, the potential harm increases. In order to limit the opportunity for misunderstanding and misrepresentation in such sales, Council finds it appropriate to require the registration of such sales and to limit their duration.

### **Sec. 8-212. Sec. 8-213. Exemptions.**

The provisions of this article shall not apply to or affect the following persons:

- (1) Persons acting pursuant to an order or process of a court of competent jurisdiction.
- (2) Persons acting in accordance with their powers and duties as public officers, such as sheriffs, bailiffs or marshals.
- (3) Duly licensed auctioneers selling at auction.
- (4) Executors, guardians, assignees of insolvent debtors, bankrupts or other persons required by law to sell such property.

### **Sec. 8-213. Sec. 8-214 License required.**

~~No person shall publish or conduct any sale coming under the provisions of this article without first having procured a license therefor.~~

No person shall publish or conduct any sale coming under the provisions of this article without first having (1) a current City of Greenville business license and (2) a Going Out of Business license in the name of the business. No Going Out of Business license shall be granted to any business operation which has not been in operation for at least six months prior to the date of the Going Out of Business license application. In addition, any person managing or overseeing a "Going Out of Business" sale for another person must also have a City of Greenville business license and a "Going Out of Business" license.

### **Sec. 8-215. License fee**

There is no fee required for a Going Out of Business license.

### **Sec. 8-214. Authority of revenue administrator.**

~~The revenue administrator is hereby authorized and empowered to supervise or regulate sales or special sales coming under the provisions of this article, and to issue appropriate licenses therefor upon proper application.~~

**~~Sec. 8-215. Application for license; submission of inventory.~~**

~~(a) Application for a license required by this article shall be made to the revenue administrator on a form to be approved by the council, and shall be in writing and verified by the applicant. Such application shall contain a description of the place where such sale is to be held, the nature of the occupancy, whether by ownership, lease or sublease, and the effective date of termination of such occupancy, and the means to be employed in publicizing such sale, together with the proposed language contained in any advertisement.~~

~~(b) Such application shall further contain, as a part thereof, an itemized list of the goods, wares and merchandise to be offered for sale, why such goods, wares and merchandise are to be sold under such descriptive name or title, and in what manner such name is truthfully descriptive of such sale, the place where such stock was purchased or acquired, and if not purchased, the manner of such acquisition and when acquired, and also the date of delivery thereof to the applicant. It shall be unlawful for any applicant to submit information in such application which is incorrect, inaccurate, fraudulent or misleading; and any license issued on the basis of such application shall be immediately canceled by the revenue administrator and surrendered by the licensee.~~

**~~Sec. 8-216. Goods that may be included in inventory.~~**

~~(a) All goods included in the inventory filed with the application for a license required by this article shall have been purchased by the applicant for resale on bona fide orders without cancellation privileges and shall not comprise goods purchased on consignment.~~

~~(b) Such inventory shall not include goods ordered in contemplation of conducting a sale regulated by this article. Any unusual purchase or additions to the stock of goods of the business affected by this article within 15 days before the filing of an application under this article shall be deemed to be of such character.~~

**~~Sec. 8-217. Bond.~~**

~~Before a license shall be issued by the revenue administrator under an application filed pursuant to this article, the applicant shall execute and deliver to the city a bond in the currently required amount, signed by such applicant, and also signed by a surety company duly authorized to transact business in the state, which bond shall be conditioned upon the faithful observance of the provisions of this article and also conditioned to reimburse and indemnify any purchaser at any such sale, as provided for in this article, duly held by such licensee, for any loss incurred or damage sustained by such purchaser by reason of misrepresentation or fraud in the sale of any such goods, wares or merchandise.~~

**~~Sec. 8-218. License fee.~~**

~~Upon filing an original application for a license to advertise and conduct a sale or special sale, the applicant shall pay the currently required license fee which is set from time to time by the council. If any such application is disapproved, one half of such payment shall be forfeited to the city as and for the cost of investigating the~~

~~statements in such application or renewal application.~~

~~(Code 1985, § 6-10-8)~~

~~Sec. 8-219. Investigation of applicant; issuance of license.~~

~~(a) — Upon receipt of an application filed pursuant to this article and payment of the fee prescribed in this article, the revenue administrator shall cause the application to be examined and investigated.~~

~~(b) — If, upon investigation, the facts as represented by the application are found to conform to the representations thereof, and the advertising proposed to be used truly represents such facts and is not fraudulent or misleading to the public, the revenue administrator shall issue a license permitting the publication and conduct of such sale.~~

**~~Sec. 8-220. Display of license; inspection of merchandise; required language in advertisements; records of sale.~~**

~~Upon commencement of any sale, the license issued by the revenue administrator shall be prominently displayed at or near the entrance to the premises. A duplicate original of the application and inventory pursuant to which such license was issued shall at all times be available to the revenue administrator or to the license inspector, and the licensee shall permit such inspector to examine all merchandise in the premises for comparison with such inventory at any and all times during the period of such sale. All advertisements or advertising, and the language contained therein, shall be in accordance with the purpose of the sale as stated in the application pursuant to which a license was issued, and the wording of such advertisement shall not vary from the wording as indicated in the application. Such advertising shall contain a statement in these words: "Sale held pursuant to License No. \_\_\_\_\_ of the revenue administrator, granted the \_\_\_\_\_ day of \_\_\_\_\_," and in such blank spaces shall be indicated the license number and the requisite dates. Books and records of the sale shall be kept by the licensee and shall at all times be available to the license inspector.~~

**Sec. 8-216. Displaying of license; use of license number in advertising.**

Upon commencement of any sale, the license issued under this Article by the City of Greenville shall be prominently displayed at or near the entrance to the premises. All advertisements or advertising and the language contained therein shall be in accordance with the purpose of the sale as stated in the application pursuant to which a license was issued, and the wording and scope of such advertisement shall not vary from the wording and scope as indicated in the application.

**~~Sec. 8-221. Expiration of license.~~**

~~A license issued pursuant to this article shall be for a period not to exceed 30 days; provided, however, if the stock of goods on hand inventories at cost or less in an amount in excess of \$50,000.00, the license provided for in this article shall be for a period not to exceed 60 days.~~

**~~Sec. 8-222. Fraudulent or misleading advertising.~~**

~~It shall be unlawful for a licensee pursuant to this article to advertise or cause to be advertised goods, wares or merchandise for a sale which do not conform to the~~

~~representations of the advertisement. It shall be unlawful for any such licensee to publish or cause to be published advertising falsely representing the reason for such sale. It shall be unlawful for any person conducting such a sale to add any goods to the inventoried stock thereof, or to sell any goods, except those in the original inventory, while representing the goods, by advertising, inference or otherwise, as being a part of the goods advertised for sale as authorized in this article.~~

**Sec. 8-223. Weekly reports to license inspector.**

~~At the conclusion of each week of a sale, or the continuation thereof, the licensee shall report to the city license inspector the approximate proportion of the original inventory of the goods sold, and shall furnish him with a revised inventory thereof.~~

**Sec. 8-217. Expiration of licenses.**

(a) A license issued pursuant to this article shall be for a period not to exceed 60 days from the starting date. The conduct of a Going Out of Business Sale after the license has expired is a violation of this Article.

(b) An otherwise valid business license shall also expire at the end of the sixty day period provided for in subsection (a) for any business which has held itself out as ceasing operations by a Going Out of Business Sale.

(c) Notwithstanding the foregoing, the otherwise valid business license of a person who manages or supervises a Going Out of Business Sale for another business shall not automatically expire at the conclusion of the sixty day period, but shall continue to be valid until its expiration or cancellation for other reasons.

**Sec. 8-218. Re-opening prohibited.** No business undertaking to have a Going Out of Business Sale shall do so with the intent to reopen elsewhere in the greater Greenville vicinity. No business having conducted a Going Out of Business Sale shall re-open at any location in the City with the same principals owning the same type, of business, or one which is substantially similar, for a period of six months from the last day of the Going Out of Business Sale. Nothing in this section shall preclude a business intending to move from one location to another from advertising a clearance sale or moving sale for purposes of reducing inventory in anticipation of the planned move, provided such sale is not advertised as a Going Out of Business Sale. Nothing in this section shall preclude a business owner, manager, or employee from accepting a position with similar business as a manager or employee, so long as the principals of the business are different.

**Sec. 8-219. Enforcement Penalties**

The City Manager of the City Manager's designee shall enforce this ordinance. Any violation of this article shall subject the person convicted to the penalties provided in City Code Section 1-5. Each day, or portion thereof, of a continuing or periodic violation shall be a separate violation, and each violation shall be subject to the prescribed penalties.